

**DEPARTMENT OF TRANSPORTATION**

DIVISION OF ENVIRONMENTAL ANALYSIS, MS 27

1120 N STREET

P. O. BOX 942874

SACRAMENTO, CA 94274-0001

PHONE (916) 653-7507

FAX (916) 653-7757

TTY (916) 653-4086

*Flex your power!  
Be energy efficient!*

January 12, 2010

Mr. Bruce Fujimoto  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812

Subject: Department of Transportation Compliance with the General Permit for Storm Water Discharges associated with Construction and Land Disturbance Activities (CGP) (Order NO. 2009-0009-DWQ).

Dear Bruce:

Thank you for your letter dated October 29, 2009 clarifying the applicability of the recently issued CGP relative to Caltrans construction projects. Caltrans is actively planning and beginning to make the necessary changes to our stormwater program to transition to the new Order. The recently posted FAQs were helpful; however, to fully understand the roles and responsibilities prescribed in the Order and the internal processes that we must change, further clarification of several issues is needed.

First however, I wanted to take this opportunity to propose several Caltrans-specific approaches to implementation of the Order. The SWRCB can facilitate this effort to improve our stormwater program by recognizing some of these unique aspects, which may be best accommodated in a consolidated permit framework.

**Annual Fees**

Your letter suggests that the draft Caltrans MS4 Order will propose to remove the administrative efficiency we currently enjoy for coverage of construction projects via our MS4 Order. This change would result in an administrative burden for both our agencies, particularly the project based annual fee. Caltrans supports continuing the present programmatic payment approach for CGP coverage, i.e. setting a flat annual fee for all Caltrans construction projects, in addition to the annual statewide MS4 fee.

**Third Party Activities**

Most Encroachment Permit projects that trigger the need for coverage under the permit are part of a common plan of development with the preponderance of the construction activity occurring on property outside of Caltrans rights-of-way (ROW), but where there is still some construction in the Caltrans ROW. Caltrans' current practice is to require the encroaching party to file the Notice of Intent (NOI) and then to verify State Board's WDID number to ensure that the State property (encroachment) is accounted for as part of an overall common plan of development.

In the answer to question three in the recently posted FAQs for Caltrans, it is stated that through easement(s), third parties would be responsible for filing for coverage under the CGP. Third-parties intending to construct within the state highway ROW must apply for and be issued a Caltrans encroachment permit. The permit is not a property right, but does authorize the permittee to perform work within the highway ROW on a temporary basis, subject to the terms and conditions of the encroachment permit. Though a Caltrans Encroachment Permit is not legally an "easement" it is functionally equivalent. Caltrans proposes that for third-party construction activities in the state highway ROW requiring coverage under the CGP, the encroaching party will be required to file for coverage under the CGP.

### **Legally Responsible Person**

Obtaining and Modifying General Permit Coverage (Findings #36), requires all "dischargers" to file all Permit Registration Documents (PRDs). Order Section IV Special Provisions, Paragraph I indicates that the Legally Responsible Person (LRP) for a public agency, such as Caltrans, is the principal executive officer (for a region) or a ranking elected official. However, the definition for a LRP in the Glossary (Appendix 5) is the person who possesses the title to the land upon which the regulated construction activities will occur. This person and only this person may designate a duly authorized representative.

In many areas of the state, particularly in rural areas and on conventional highways, Caltrans, operates the highway by some property right other than fee ownership (e.g.: prescriptive rights, special use permits, or easements), thus Caltrans maybe the discharger, but is frequently not the landowner. Clarification is needed on who the LRP is (and who should file the required documents) when Caltrans does not own the underlying project area in fee.

Order Section VII Training Qualifications and Certification Requirements, states that the discharger shall ensure that Storm Water Pollution Prevention Plans (SWPPPs) are written, amended and certified by a Qualified SWPPP Developer (QSD). Throughout the Order the LRP is confused with the "discharger", and depending upon the discussion one or the other is mentioned (See Order Sections XIV SWPPP Requirements and XVI, Annual Reporting Requirements). Clarification is needed on who actually must have the certification: the Contractor's SWPPP developer, the "discharger", or the land owner's representative.

Currently, the Caltrans Resident Engineer is the State's authorized agent for the administration of the construction contract, is responsible for all aspects for project construction and vested with the necessary authority to approve and implement the Project's SWPPP. Caltrans proposes that for each Caltrans project, the District Director (LRP) will designate the project's Resident Engineer as the State's duly authorized signatory for the LRP.

**Regional Board Authority Timeframe**

Order Section XV Regional Water Board Authorities, indicates Regional Water Boards may terminate coverage under this General Permit for dischargers who fail to comply with its requirements or where they determine that an individual NPDES permit is appropriate. For a large project it would be risky to undertake construction due to the uncertainties of what additional requirements could be imposed, and when. Please clarify specific timeframes for the RWQCBs to determine if an individual permit or additional requirements are necessary for a project.

**Monitoring and Reporting**

Attachment D & E Sections I.5.d Risk Level 2 and 3 Monitoring and Reporting Requirements, the intent of "monitor and report site run on" is unclear; is water quality sampling and analysis required, if so, how many samples and at what frequency?

In Attachment D & E Section I.10.b.i-iii Risk Level 2 and 3 Non Stormwater Discharge Monitoring Requirements; what are the number of samples and at what frequency?

In Attachments D & E Section I.15.a for Risk Level 2 and 3 NAL Exceedance Report; what is the deadline for submitting the Report?

We would appreciate the opportunity to meet with you and discuss these issues in more detail. Please contact me at 916 657 4446 so that we can arrange a time to meet.

Sincerely,



G. SCOTT MCGOWEN, P.E.  
Chief Environmental Engineer  
California Department of Transportation

c: Stormwater Management Team (Joyce Brenner-SW Implementation, Karl Dreher-SW Design, Chuck Suszko-Construction Engineering, Tim Sobelman-SW Management Design, Parviz Lashai-Roadside Maintenance, Jack Broadbent-Landscape)

KJones-DEA

Donna Clark-Legal

Walt Shannon-SWRCB, [wshannon@waterboards.ca.gov](mailto:wshannon@waterboards.ca.gov)

Jamie Favila-SWRCB, [jfavila@waterboards.ca.gov](mailto:jfavila@waterboards.ca.gov)

Annalisa Kihara-SWRCB, [akihara@waterboards.ca.gov](mailto:akihara@waterboards.ca.gov)